IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER
S.B. Civil Writ Petition No.2947/02
Geega Ram & Anr. Vs. The Board of Revenue & Ors.

Date of Order :: 23rd July, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri S.K. Singodiya, Advocate for petitioners.
Shri M.M. Ranjan, Advocate for respondents.

REPORTABLE

The petitioners have by this writ petition challenged the judgment dated 18.12.2000 passed by the Board of Revenue and the judgment dated 13.5.1997 passed by the Revenue Appellate Authority and prayed that the judgment passed by the Sub-Divisional Officer, Nawalgarh (for short- the SDO) dated 13.1.97 be restored and it be declared that petitioners are khatedars of land of khasra no.734 measuring 0.70 hectares situated at

Tan Jahaj, Tehsil Udaipurwati, District, Jhujhunu.

The petitioners filed a revenue suit before the SDO inter alia on the premise that a portion of khasra no.733 measuring 1.30 hectares and khasra no.734 measuring 0.70 hectares were part of old khasra no.521 measuring 7 bighas and 8 biswas. This land is situated in Village Tan Jahaj, Tehsil Udaipurwati, Distt. Jhunjhunu. Old khasra no.521 was entered in the name of the petitioners and their ancestors but later on at the time of Settlement, khasra no.521 was divided into two parts namely khasra no.733 and 734. While earlier khasra no.733 continued to be recorded in the name of the petitioners, the Settlement entered khasra no.734 in the name of respondent no.4. A Revenue suit was therefore filed seeking declaration that khasra no.734 measuring 0.70

hectares was in the name of the petitioners. The SDO by his order dated 13.1.1997 decreed the revenue suit and declared the petitioners as khatedar tenant of khasra no.734 measuring 0.70 hectares and accordingly directed corrections to be made in the revenue records. Respondent no.4 Prabhat challenged the order of the SDO before Revenue Appellate Authority (for short- the RAA) who by its order dated 13.5.1997 reversed the judgment of the SDO. When the petitioners challenged the judgment of the RAA before the Board of Revenue (for short – the Board), the Board by its judgment dated 18.12.2000 dismissed the appeal. Hence this writ petition.

I have heard Shri S.K. Singodiya, the learned counsel for the petitioners and Shri M.M. Ranjan, the learned counsel for the respondents.

Shri S.K. Singodiya, learned counsel for the petitioners argued that the Board as well as the RAA erred in law in not taking into consideration the available records in their possession. They did not consider the jamabandi of Svt. 2029-2032 (Ex.P-1) and jamabandi of Svt. 2033-2036 (Ex.P-2), jamabandi of Svt. 2025-2028 (Ex.P-3), khasra girdawari of 2034-36 (Ex.P.5), receipts of lagans (Ex.P-6, P-7, and P-8). The Board and the RAA have dismissed the revenue suit of the petitioners and set aside the judgment and decree passed by the SDO only on the basis of the presumed consent of the petitioners / their predecessors for transfer of the rights in the lands of khasra no.734 in favour of the respondent no.4. It was contended that no such consent was ever given and note to this effect made by the employees of the Settlement Department was false and

fabricated. Settlement does not have any power either to confer khatedari rights on any one or change the revenue records. At the time of settlement, khasra no.521 was recorded in the name of the petitioners and therefore it recorded the same in favour of respondent no.4 on the basis of the alleged consent of the petitioners which in fact was never given. The Settlement Department has no legal authority to change the records of the land without their being any order from the competent authority. The Board as well as the RAA solely based their order on the so called possession of respondent no.4 and the fact that name of his father has been recorded as khatedar of khasra no.734 but in doing so, both remained oblivious of the fact that his name was entered only on the ground the so called consent of the petitioners which was presumed but which in fact was never given.

Learned counsel for the petitioner relied on the judgment of this Court in Kanha & Ors. Vs. Board of Revenue and Ors., 1999 (1) WLC 343 to support his arguments.

On the other hand, Shri M.M. Ranjan, learned counsel for the respondents opposed the writ petition and argued that the Board and the RAA have both passed the orders on consideration of the material available on record and after due application of mind. It was denied that name of father of respondent no.4 was entered as khatedar of khasra 734 only with the consent of the petitioners. Khasra no.521 was bifurcated into two khasras 733 and 734. While khasra no.733 was recorded in the name of petitioners, khasra no.734 was entered in the name of Prabhat. The petitioners have themselves admitted that they do not have cultivatory possession of khasra no.734 which fact was attested by

Sarpanch of the Revenue Village also. Judgments passed by the Board and RAA do not suffer from any such infirmity which may be called error apparent on the face of record. The writ petition is therefore wholly misconceived and the same is liable to be dismissed.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record.

The SDO passed the first judgment by considering the statement of PW-1 Bhura, PW-2 Bodu Ram and PW-3 Prabhati Ram and PW-4 Ramu and relevant documents including Ex.P-1 to P-8 as also Ex.D-1 to Ex.D-6. The SDO in his order noted that Prabhati clearly indicated that khasra No.734 which at the time of settlement was entered in the name of the petitioners was earlier recorded in the name of the petitioners. The Settlement Department

could not have changed the khatedari by entering the name of respondent no.4 only on the basis of their assertion that they were in cultivatory possession of the said land. If at all the respondent no.4 was claiming right over the land in dispute, the proper course for him was to get his rights declared and accordingly records corrected. What therefore has to be seen is whether the view taken by the SDO suffer from any such legal error as could have justified interference therewith by the RAA and Board. The RAA has solely based its order on so called admission made by the petitioners that they were not in possession of khasra no.734 which fact has been certified by Sarpanch also. The RAA therefore concluded that the respondents were bound by these. It was solely on the basis of this that the judgment passed by the SDO was reversed. When the matter went to the Board,

the Board also followed the suit and noted that the petitioners had acknowledged possession of Mangla which fact was confirmed by Sarpanch also. The Board therefore also fell into the same error by recording a finding that the entry of respondent no.4 as khatedar tenant of khasra no.734 measuring 0.70 hectares was made with the consent of the petitioners.

The respondents have not been able to show as to what right the settlement had to change the existing entries in the revenue records. The Board as also the RAA has noted the fact that khasra no.734 was entered in the khatedari of the petitioners. The Settlement was therefore bound to reflect the same position with regard to the records of rights which existed at the material time. It could neither delete the name of any khatedar nor could it change any such entry. The

consent which according to the respondents was given by the petitioners to the settlement could not afford any basis to the settlement for making changes in the records of rights particularly when they also admitted possession of the respondent no.4 / his father in the disputed land. The petitioners have alleged that the so called consent was false and fabricated. The RAA and the Board could not have therefore attached any sanctity to such consent. If at all the respondent no.4 wanted to get his title on the basis of possession, if at all there was one or the admission made by the petitioners, the only mode available to him was to file his independent revenue suit to get his title / rights declared.

In my considered view therefore the RAA as well as the Board have both erred in law

in interfering with the judgment passed by the learned SDO.

The writ petition is therefore allowed and the impugned orders of the RAA and the Board dated 13.5.97 and 18.12.2000 are set aside and the judgment of the SDO dated 13.1.97 is restored.

(Mohammad Rafiq),J.

Rs/-